

**MINUTES**

**MONTANA SENATE  
56th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN LORENTS GROSFIELD**, on March 26, 1999  
at 8:05 A.M., in Room 325 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Lorents Grosfield, Chairman (R)  
Sen. Al Bishop, Vice Chairman (R)  
Sen. Sue Bartlett (D)  
Sen. Steve Doherty (D)  
Sen. Duane Grimes (R)  
Sen. Mike Halligan (D)  
Sen. Ric Holden (R)  
Sen. Reiny Jabs (R)  
Sen. Walter McNutt (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Delila Croucher, Committee Secretary  
Valencia Lane, Legislative Branch

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 455, HB 530,  
Executive Action: HB 185; HB 197; HB269; HB 530;  
HB 455; HB 482

**EXECUTIVE ACTION ON HB 482**

**Motion/Vote:** SEN. BARTLETT moved that **AMENDMENT HB0048201.av1** BE  
ADOPTED WITH CHANGES. Motion carried 6-0 with Doherty, Jabs and  
Grimes being absent. **EXHIBIT(jus68a01)**

**Jeff Mangen, HD 45, Great Falls** presented a conceptual amendment to the Committee.

**Motion/Vote:** SEN. HALLIGAN moved that **CONCEPTUAL AMENDMENT BE ADOPTED**. Motion carried 6-0 with Doherty, Jabs and Grimes being absent.

**Motion/Vote:** SEN. MCNUTT moved that **HB 482 BE CONCURRED IN AS AMENDED**. Motion carried 5-1 with Halligan voting no.  
{Tape : 1; Side : A; Approx. Time Counter : 0 - 5.6}

### EXECUTIVE ACTION ON HB 185

**Motion:** SEN. HALLIGAN moved that **HB 185 BE CONCURRED IN**.

#### Discussion:

**SEN. HOLDEN** asked for an explanation for the \$138,000 Fiscal Note. **SEN. HALLIGAN** said that there is a lot of Federal case law on the civil rights issue of juveniles that this bill will help make sure that standards are upheld. People want these standards so that they know what they have to comply with. This bill does now, what Federal case law has forced to be done anyway. Statute offers protection from getting sued. **SEN. HOLDEN** asked for a response to the theory that the more you do the more you get sued for. **SEN. HALLIGAN** said that if one has complied with the law, someone is potentially able to sue you, but now one has the statute of the law to rely on that sets minimum standards. **SEN. HOLDEN** noted that he will vote no on the bill. The people who testified seemed to be giving a false sense of endorsement. The people in Glendive did not offer support for this bill as well. **SEN. HALLIGAN** said that standards prevent negligence. **SEN. HOLDEN** said that standards can also prevent negligent establishments from receiving deserved negligent charges.

**SEN. BARTLETT** said that this bill grew out of a study resolution that required a look at correctional standards. Eventually, it ended up in the hands of the Correctional Standards Oversight Committee to provide consistency. It is modeled off of Federal standards for detention facilities. This is a piece of legislation that has had a lot of review during the interim and was carefully designed by a group of legislatures, who through the course of their study learned the most of any of us about these particular issues.

**SEN. MCNUTT** said that this bill is kind of a catch twenty-two. However, this bill says it will develop minimum standards for

life, health and safety around the state. It is not a bad piece of legislation and he supports it.

**SEN. HALLIGAN** said that a person on a jury will have discretion to establish what is reasonable deviation from the standard.

**Vote:** Motion carried 6-1 with Holden voting no.

***{Tape : 1; Side : A; Approx. Time Counter : 5.6 - 19.2}***

#### **EXECUTIVE ACTION ON HB 197**

**Motion:** **SEN. HALLIGAN** moved that **HB 197 BE TABLED.**

**SEN. HALLIGAN** noted that the Committee shouldn't put a lot of work into something that doesn't make any sense whatsoever. **SEN. GROSFIELD** said that the reason time is being put into this is because he didn't like it statements of intent were dropped last session. Bills that come up, that have rule making in them, having very little if any guidance to the agency as to how they will specifically develop the rules. Statements of intent, when used right, give guidance. It makes sense to have some kind of guidance for the legislative Committee to look at when they are dealing with the bill. **SEN. MCNUTT** said that it is time consuming to have rules established. The process may be extremely slowed down. **SEN. HALLIGAN** made the point that not only will the process be slowed down, but rule notes will have to be debated.

**Vote:** Motion carried 6-2 with Grimes and Grosfield voting no.

***{Tape : 1; Side : A; Approx. Time Counter : 19.2 - 26.1}***

#### **EXECUTIVE ACTION ON HB 269**

**SEN. HALLIGAN** proposed that the Department adopt rules that would allow an advocate in addition to the guardian ad litem that is appointed for the child. We should allow for the Department to establish the position of advocate in their rules and set a time frame for the rules to be in place.

**SEN. GRIMES** questioned whether an advocate program would be similar to the bill or whether it would be more open. **Chuck Hunter,** , requested legislative direction in that area, especially if it is the intent of this Committee to make the advocate position broader than is presently in the bill. Currently any family who wants someone involved in this fashion is allowed to have them participate.

**{Tape : 1; Side : A; Approx. Time Counter : 26.1 - 30.1}**

**SEN. GROSFIELD** raised a concern that advocacy roles are really attorney roles. He also questioned who would qualify as a family advocate. Does this person need training and certification? Is there an agreement with the court if the advocate ends up accompanying a family member to court? He further questioned what it would take to scale this bill back to a bare minimum that would include rule making authority without a rule making note for the agency.

**Ms. Lane** explained a substitute bill would be necessary that directed the Department to adopt rules and guidelines. Another alternative would be to go through the bill and limit it in statute. The court should have some input as well.

**SEN. GRIMES** suggested that the purpose, duties and definition sections could be clarified.

**SEN. BISHOP** maintained that this bill is so flawed that there is not much purpose in trying to work with it.

**SEN. JABS** asked how much power this bill would give an advocate.

**SEN. GROSFIELD** believed an advocate would have quite a bit of power, but that could be scaled back.

**SEN. HOLDEN** said that it seemed to be his observation from the testimony that there were a lot of grandparents and family members that wanted to maintain custody, even though the parents had problems. There are two or three pieces of legislation that we passed through this session that strengthened the ability for relatives to gain custody of children. Having family advocates would greatly diminish those other pieces of legislation. **SEN. HALLIGAN** insisted that there are other bills to serve that purpose.

**SEN. MCNUTT** remarked he would like to see the bill tabled. **SEN. GRIMES** suggested that the bill not be acted on and held in Committee.

**SEN. GROSFIELD** pointed out that the transmittal deadline for amendments was next week. Bills without amendments can be transferred after that time.

**SEN. BARTLETT** related that it would be better to take some definitive action on the bill. The information and arguments that have been put forth, by both sides, make some sense. We need to put safeguard and restrictions on who can serve as a

family advocate. She added that this bill was extremely well received in the Public Health Committee by people from both parties. The best thing to do is to strip the bill and insert language that would give the Department some direction for the adoption of rules to address these kind of things.

**SEN. GROSFIELD** said that perhaps we should keep section one, change line 20 of section two, and keep section three. It may be possible to implement a two year sunset provision.

**SEN. HALLIGAN** suggested the Committee send the Department a strong letter requesting rules be adopted to implement family advocacy. **Mr. Hunter** agreed that the message is clear that the Department needs to be doing something like this. There are many good things in this bill that can be put into practice right away, such as providing information to the family about process, the law, and their rights.

**SEN. BISHOP** maintained that this is a bill that is not needed. A court can appoint people to do some of these things. When a family member is given this much authority, they may make things worse. There are enough people involved in these situations already.

**Motion:** **SEN. BISHOP** moved that **HB 269 BE TABLED. Motion Failed.**

**SEN. GROSFIELD** contended that the Committee had a few options. One option is to sit on the bill. Another is to scale the bill down and rewrite it. The Committee planned on meeting for a few minutes upon adjournment of the Senate.

**{Tape : 1; Side : A; Approx. Time Counter : 30.1 - Tape : 1; Side : B; Approx. Time Counter : 9.9}**

#### **HEARING ON HB 455**

**Sponsor:** **REP. LAUREN SOFT, HD 12, N.E. Billings Heights**

**Proponents:** **Anne Gilke, Supreme Court Assessment Council  
Rosemary Miller, Catholic Social Service  
Mark Ricks, LDS Social Services  
Sharon Hoff, Montana Catholic Conference**

**Opponents:** **None**

**Opening Statement by Sponsor:**

**REP. SOFT** opened on his bill. As a result of the work done with the people in the Departments and in the adoption task force, this bill is intended to clarify laws relating to adoption. There are a few areas of this bill that are necessary to discuss. First, the bill addresses the time period for the termination of parental rights. In the 1997 Legislative Session language was inserted that said five days prior to a hearing, termination of parental rights would occur. The adoption workers did a good job trying to stay within that time frame, but found that working with the courts in that time frame is very difficult if not impossible. Therefore, the time line was changed to 72 hours after the birth of a child as a minimum time to relinquish rights to the child. Next, it was requested that the name, phone number, address and other information on the adoptive parent should be made available as opposed to just their attorney. This adds a more human element to the adoption process. Third, the bill has a deletion of a requirement for the punitive father to register with the punitive father registry if the father has established a substantial relationship with the child. The requirements for a substantial relationship are outlined in the bill. If a substantial relationship with the father is established, there is no need to go through the process of the punitive father registry. Fourth, the bill allows for, but is not mandatory, for a background check on people thirteen years of age in potential adoptive homes. Finally, the bill says that when there is a direct placement with a member of an extended family the court can waive the requirement of a pre-placement evaluation.

**{Tape : 1; Side : B; Approx. Time Counter : 9.9 - 15.8}**

**Proponents' Testimony:**

**Ann Gilke, Supreme Court Assessment Program**, rose in support of the bill. In 1995 the Department of Health and Human Services was told by the legislature to study the adoption statutes and to look at the Uniform Adoption Act that was being proposed nationally, and reconcile the two and improve the statutes of Montana. This is a clean-up bill from the bill drafted from the 1995 study, and was presented to the 1997 Legislature. The change from a punitive father needing to register, from five days before a hearing to terminate parental rights, to seventy-two hours after child's birth, is a good thing.

The punitive father often does not know when the hearing date is. The birth of a child is a more meaningful child and the father is more likely be aware of this date. When a punitive father is trying to prove that he has a substantial relationship with a child, he does not need to register. This way, no one is tricked or trapped if they miss a registration provision but have a

meaningful relationship with the child. Background checks on adoptive families for everyone thirteen years of age or older. What was found by the private adoption agencies that are required to comply with these statutes was that anyone over thirty or thirty-three in the home, which a lot of these parents are, there were no youth court records on them because they have been destroyed based on probations own requirements of destruction of records. This bill says that youth court records can be looked at but that it is not a requirement. **EXHIBIT(jus68a02)**

**{Tape : 1; Side : B; Approx. Time Counter : 15.8 - 19.7}**

**Rosemary Miller, Catholic Social Service**, rose in support of the bill. The punitive father registry established in the last session has really helped to make sure that birth father's rights are attended to. The changes presented in this bill would make it a lot easier, legally, to be able to do the job at hand, which is placing children for adoption.

**{Tape : 1; Side : B; Approx. Time Counter : 19.7 - 20.3}**

**Mark Ricks, Director of LDS Social Services**, rose in support of the bill. It will simplify adoption work in working with birth mothers and fathers. When it is in the best interest of the baby, the birth mother and the adoptive family to move swiftly it is done.

**{Tape : 1; Side : B; Approx. Time Counter : 20.3 - 21.4}**

**Sharon Hoff, Montana Catholic Conference**, rose in support of the bill.

**{Tape : 1; Side : B; Approx. Time Counter : 21.4 - 21.6}**

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**SEN. HALLIGAN** asked how this bill would respond to fathers that are not aware that their child is being delivered and the seventy-two hour time limit occurs. He inquired if there is any middle ground that would allow for notice to the potential father. **Ann Gilke** said that the date which was in the existing bill was not working. When the task force got back together and discussed the clean-up sections, seventy-two hours after the birth of the child was determined because it coincides with the time a birth parent can relinquish parental rights. That date is not set in stone, it simply responds to the five days prior to a hearing because that is not working. There is not much of a time difference between the two in most cases. Hearings are often close to the child's birth.

**SEN. HALLIGAN** asked if a person is listed as a father on the birth certificate, is that the presumption. **Ms. Gilke** said that it is a requirement to give notice to a presumed father listed on the birth certificate and all the other possible fathers.

**{Tape : 1; Side : B; Approx. Time Counter : 21.6 - 24.8}**

**SEN. GROSFIELD** asked **Ms. Gilke** to comment on the repealer. **Ms. Gilke** said that the repealed section implemented by this bill deals with step-parent adoption. The task force compiled statutes from other states and the information taken on step-parent adoption was more confusing than existing statute. This cleans up Montana adoption so that step-parent adoptions didn't change from past law to the new Montana Adoption Act. This statute was removed because it really didn't make much sense.

**Closing by Sponsor:**

**REP. SOFT** closed on his bill. A question came up in the House hearing much like **SEN. HALLIGAN'S** question. The birth mother comes forward with information on possible fathers. Once that occurs then various adoption agencies actively pursue that information to locate medical records and inform the father of what is going on. Once he is informed, a hearing date is set.

**{Tape : 1; Side : B; Approx. Time Counter : 24.8 - 27.6}**

**EXECUTIVE ACTION ON HB 455**

**Motion/Vote:** **SEN. HALLIGAN** moved that **HB 455 BE CONCURRED IN.**  
**Motion carried 7-0.**

**HEARING ON HB 530**

**Sponsor:** **REP. DAN MCGEE, HD 21, Laurel**

**Proponents:**      **George Mulchare-Jones, Butte Physician**  
                         **Sharon Hoff, Montana Catholic Conference**  
                         **Mary Ann Harrison, President for Mission for Life**  
                         **Laurie Koutnik, Christian Coalition of Montana**  
                         **Jenny Dodge, Citizens' Network**  
                         **Linda Holden, Citizen**  
                         **Arlette Randash, Eagle Forum**

**Opponents:**      **Christine Kaufmann, Montana Affiliate of the**  
                         **National Abortion League**



**Tammy Watts, Citizen**  
**Mark Miles, MD, Citizen**  
**Julie Daffin, Montana Right to Life**  
**Maureen Britell, National Abortion Federation**  
**Devin Hartman, Intermountain Planned Parenthood**  
**Anita Kuennen, Blue Mountain Clinic**  
**REP. GAIL GUTSCHE, HD 66, Missoula**  
**Beth Brenneman, ACLU of Montana**  
**Rebecca Moog, Montana Woman's Lobby**  
**Lola Perrins, Montana Right to Life**  
**Stacey Anderson, Montana Chapter of the National**  
**Abortion and Reproduction Rights Action**  
**League**

**Opening Statement by Sponsor:**

**REP. MCGEE, HD 21**, opened on his bill. This is an act revising certain laws regarding abortion in the State of Montana. The reason that this bill is presented to the Committee is to address the actions of the First Judicial District regarding House Bill 365 from the last session, which passed through the legislature with a vote of 68-31 in the House and 42-8 in the Senate. It was signed into law by the Governor and the day it was to become law, the First Judicial District ruled an injunction against it and finalized the injunction in June of 1998. I had asked the court to be able to intervene on that action and was allowed to be an intervener, and as such, worked with the Attorney General's Office and the Legislative Services Division.

I worked with Clay Smith from the Attorney General's Office and Greg Petesch from Legislative Services to try and see if it would be more appropriate to pursue an appeal to the Montana Supreme Court, or whether it would be better to address the concerns of the court in the injunction legislatively. The latter choice was chosen, therefore, what is before the Committee today is our best attempt to address the courts concerns. In going back and re-reading Rowe v. Wade, it was made very clear that the state has a legitimate interest in protecting both the woman's health and the potentiality of human life. Each of which interest grows and reaches a compelling point at various stages of the woman's approach to term. Rowe v. Wade is also defined that subsequent to viability, the state, in promoting its interest in the potentiality of human life, may if it chooses, regulate and even proscribe abortion, except where necessary in appropriate medical judgement for the preservation of the life or the health of the mother.

With those two items in mind, and then with the fact that we are dealing with a partially born human being, Montana's Constitution

says that we are all born free and that we have certain unalienable rights. Among those rights is the right to defend our lives and our liberties. Our Constitution also provides for the right of privacy and it shall not be infringed without the showing of compelling state interest. Therefore, the issue of what is compelling is fundamental to what this bill is about. The First Judicial Courts ruling stated that not only this statute is void due to vagueness, but it also violates Montana's right to privacy. It stated that viewing the illustration submitted to the legislature prior to the passage of House Bill 365, one could say that the DNX procedure is quite gross and unpleasant, both to the eye and the mind. It further stated that indeed this court does not pass any judgement on whether banning such a procedure during a particular gestation period could pass Constitutional muster.

It then goes on to say that the problem with the bill is that the language is too vague. So, what we have attempted to do in the bill is define partial birth abortion. The bill specifically outlines a procedure that Dr. Martin Haskell coined a DNX procedure as a partial birth abortion. The bill specifically describes the procedure in order to address the vagueness issue stated by the Supreme Court. In order to address the right of privacy, keeping in mind that the state Constitution says that it shall not be infringed without the showing of a compelling state interest. Going back to Rowe v. Wade, the states legitimate interest in the protection of the potentiality of life will grow to the point of compelling. The state cannot show a compelling state interest in statute. The courts decide when a compelling state interest has been achieved.

This is an attempt to provide a background and an argument that the court would consider in making its decision. This bill does not intend to unduly prohibit other abortions or to unduly restrict a woman's right to choose and abortion, nor does it. This bill intends to prohibit one particular abortion technique which some people call a DNX, and others call a partial birth abortion. One other thing that the court found was some unconstitutional language within the bill that is being stricken from the bill. The Committee has before them pictures of what a partial birth abortion looks like.

The point of this is to show what a baby looks like when a suction tube is inserted into the back of the head in order to evacuate the contents of the skull. All of the past Supreme Court decisions have passed down to us a jurisprudence. That jurisprudence deals with abortion. Abortion deals with an unborn child. What we have here is a rather renegade form of abortion where half of the body or three quarters of the body is extracted from the mother and then the baby is killed. The difference

between this and title 45, deliberate homicide, is three inches. Some people in the abortion industry believe that the abortion lobby manufactures misinformation. **REP. MCGEE** presented a packet of information to the Committee. **EXHIBIT(jus68a03)**

**{Tape : 1; Side : B; Approx. Time Counter : 27.6 - Tape : 2; Side : A; Approx. Time Counter : 2.8}**

**Proponents' Testimony:**

**George Mulchare-Jones, Butte Physician,** rose in support of the bill. He has a family practice and obstetrics and has spent a great deal of time in Africa dealing with emergency obstetrical care. One of the purposes of legislative and legal process is to establish boundaries that define that conduct of human affairs. This bill is establishing a boundary that accords the post-viable fetus some measure of protection.

From a medical and obstetric perspective, there is a medical consensus as to when a fetus is viable. That is when a fetus has a reasonable chance and probability of living independently outside the womb, as defined by the Supreme Court of the United States. That boundary, now, is twenty-four weeks in nearly all circumstances and between twenty-two and twenty-four weeks in selected circumstances. That is the boundary of viability. There is a consensus as recognized by the American Medical Association as to what constitutes a procedure known as intact DNX, or partial birth abortion.

In this procedure, a woman's cervix is deliberately dilated, the fetus is manipulated into a breach position, the fetus is delivered feet first to the level of the neck, a scissor is thrust into the nape of the neck, a catheter is inserted to evacuate the inter-cranial contents thereby collapsing the fetal skull and delivering the rest of the fetus intact. There is a consensus as to the medical and obstetrical risk of late term abortions. One of the arguments that was used to legalize elective abortion, was the argument that abortion is safer than pregnancy. That is to say that the chance of dying from an abortion procedure is less than the chance of dying from a pregnancy related complication. This is not true for late term abortions. At twenty-one weeks or more, the maternal death rate is 16.7 per 100 thousand procedures for late term abortions. That exceeds that maternal death rate of child birth which is 6.7 per 100 thousand procedures.

Compared with early abortions, post twenty week procedures are four times more expensive, seven times more likely to lead to medical complications, and much more physically and emotionally traumatic for woman. When the debate over partial birth

abortions began, pro-choice advocates stated that the vast majority of partial birth abortions were done to preserve the life or health of the mother or in a circumstance where the fetus had a lethal anomaly. This was not and is not simply true. At least 80% of partial birth abortions are done when the fetus is completely normal and there is no threat to the woman's life or health. In the obstetric and medical circumstance where the life or health of the mother is threatened by a pregnancy related complication, the solution is not abortion, but rather delivery. Furthermore, in those circumstances where the gestational age of the fetus is twenty-four weeks or beyond, there is a reasonable chance that the fetus will survive. Those who argue in favor of partial birth and late term abortions, the vast majority of which are elective, do not recognize or acknowledge the existence of any boundaries. The life of the fetus, the reason of medical science, and the common sense that if any person knows the gruesome nature of this procedure, argues for some boundary that says this is going too far. That boundary rests before the Committee in House Bill 530 and should be supported by this Committee and this Legislative body.

***{Tape : 2; Side : A; Approx. Time Counter : 2.8 - 9}***

**Sharon Hoff, Montana Catholic Conference**, rose in support of the bill with the amendments offered by **REP. MCGEE**. House Bill 530 is about banning an abortion procedure. It is not about whether a woman can choose to continue a pregnancy. Over 400 U.S. obstetricians and gynecologists have indicated that this procedure is never medically necessary to save a woman's life, health, or reproductive capability.

The Partial Birth Abortion is not a procedure recognized by the medical community or the American College of Obstetricians and Gynecologists. Some of the things that the doctors have to say about this procedure is that when the dilation happens, it is forceable. This creates what is called an incompetent cervix. That is one of the main causes of infertility in woman. It also risks the infection of the mother in that it is done in a non-sterile environment that has been exposed by the dilation. When the doctor reaches in to pull the child into a breach position it is very dangerous. It is done blind, or with the use of an ultrasound, and could rupture or tear the uterus with the instrument that is used to grab the child's leg. The third step in the abortion, which is putting the sharp instrument through the back of the skull, is very dangerous. It exposes shards of bone that if are scraped against the uterus with its immense blood supply, would cause shock within three to four minutes and could totally pump the mothers blood out in ten minutes.

The American Medical Association's legislative council voted unanimously to recommend that the AMA endorse the Federal Partial

Birth Abortion Act to ban the procedure. While the entire AMA remained neutral on the Federal act, the council concluded that the procedure is not a recognized medical technique, almost does not exist in medical literature, and is basically a repulsive procedure. Others are likely to say that late term abortion is already illegal in Montana. Montana law does indicate that after viability of the fetus, unless an appropriate medical judgement, the abortion is necessary to preserve the life or "health" of the mother. The critical word in current law is health and is defined in Doe v. Bolton as encompassing all factors; physical, emotional, psychological, familial, the woman's age, marital status, and anything that is relevant to the well being of the patient. It is clearly stated that this language means that there is no significant legal barrier of any kind in the U.S. for a woman to obtain an abortion during any state of her pregnancy. Health in this piece of legislation has been defined using a different portion of Montana law.

However, if that definition were before the U.S. Supreme Court, they could move back to the Doe v. Bolton with the broader health language. This language needs to be removed. This procedure is far more akin to infanticide than it is to abortion. What we are looking at is the difference between the life or health of the mother versus the life of the baby. If you are parading off of the health of the woman for the life of the baby, there is no equality in that. It is simply not appropriate. Another concern is with the explicit language that defines the procedure. While it is very effective in looking at and addressing the concerns of the district court, an abortion provider could possibly avoid the law by simply eliminating a step of changing a step. However, sometimes we need to take baby steps in order to get something done, and in law there is not always a pure form.

**EXHIBIT (jus68a04)**

**{Tape : 2; Side : A; Approx. Time Counter : 9 - 14}**

**Mary Ann Harrison, President for Mission for Life**, rose in support of the bill. **Ms. Harison** noted that she is pro-choice and that her group represents the middle way. Partial birth abortion, based on our research and studies and communications with both sides is clearly an infanticide issue. This is not about normal abortions or post-viability abortions. This is an actual delivery and could have otherwise sustained life. Another issue is the need for prevention and education. We must educate our youth and woman, and empower woman to make proper choices.

A recent episode of a baby found in a garbage can in Missoula is just one of the first of what will be many that just go unheard. This is a serious matter that we must face. We must no longer be victims as woman and we must be empowered. It is appalling that

we are before you today to face this issue and draw the line and argue what is right and what is wrong. We cannot face this based on dogma. We can only go by law. Under Rowe v. Wade, the 1973 Supreme Court ruling legalizing abortion in the United States, left standing article 11-95 out of the Texas State Penal Code which deals with this specific matter. It is known as parturition, a medical term. What they left standing and is still standing is this: "Whoever shall during parturition of the mother, destroy the vitality or life of a child in the state of being born and before actual birth, which would have otherwise been born alive, this person shall be confined to the penitentiary for life but not less than five years."

This is not an abortion, this is a delivery in process. **Ms. Harrison** is not opposed to a partial birth abortion in a second trimester based on the law, before post-viability. But this is clearly happening in the United States, whether we want to believe it or not, on elective matters. This is an out that woman feel force that they have no other choice than to kill their child. This is wrong. This legislature should stop this and also allocate funds in the future on prevention and education. Governor Raccicot wrote a letter in August of 1998 that stated that he supported and approved and signed legislation in Montana that banned partial birth abortion in Montana. Although that legislation is presently the subject of litigation, he supported and will continue to support the principles embodied in that legislation. He encouraged our efforts to inform the public as to what is available in their communities to prevent abortion and unwanted pregnancies and encourage adoption.

**Ms. Harrison** stated that these woman do not know their options and are being forced into something that is tragic. The message must be to empower woman.

**{Tape : 2; Side : A; Approx. Time Counter : 14 - 18.2}**

**Laurie Koutnik, Christian Coalition of Montana**, rose in support of the bill. This bill definitely impacts the life of the most helpless and vulnerable among us. Thousands of babies in this country lose their lives every year just moments from breathing that first breath. This barbaric procedure is defenseless, whether it is debated in medical circles, the halls of congress, across mainstream America, or among the people of Montana. Overwhelmingly, Montanans continue to grow in numbers, reflecting their disapproval of partial birth abortions. They are appalled to learn that this grisly act does occur right up to the point of delivery.

Like many legislators that heard unforgettable testimony last session, people in Montana are shocked to learn that this is

happening in our state without any regulations to prohibit it from occurring. Two years ago, this legislature overwhelmingly enacted a ban to prohibit this kind of killing. Governor Raccicot signed it into law. Nevertheless, while the U.S. Supreme Court has given the states the right to limit abortion for compelling interest, the First Judicial Court ruled that the language of the initial law was too vague and violated rights to privacy.

Today we come in support again of an act to ban a most heinous crime of infanticide to protect the most fundamental right we all possess. The right to life. Our Creator gave us this right. No court, or body should be allowed to recklessly infringe on it without severe penalties of law. Rep. McGee has spent endless hours in working with individuals to craft language that will satisfy Montana's court. This is not an effort in futility unless the courts exercise raw judicial power. This is an act born out of a strong sense of moral conviction and responsibility to Montana citizens. We are asking all of you to continue to be consistent in this regard and once again pass this ban. This bill does not address every concern, and some may argue that this bill does not go far enough. Nevertheless, this is a first step to enact legislation that recognizes the type of harm that this type of abortion inflicts.

Let us begin to codify into law what Montana will or will not allow to go unchecked in its boundaries. We are not accountable for what other states may choose to do, but we will be accountable in the sight of God for what we do, or fail to do, to protect the most innocent among us. Please pass House Bill 530.

***{Tape : 2; Side : A; Approx. Time Counter : 18.2 - 22.1}***

**Jenny Dodge, Citizens' Network**, rose in support of the bill with the proposed amendments. Citizens' Network opposes abortion at all stages of gestation. This bill upholds the protection of the most vulnerable citizen of this state and insures safety and quality of life for future generations. Each legislator here has been entrusted by the people of Montana, with the commission to defend and protect their lives. This certainly should apply to the unborn life. The 1997 statistics show that in Montana, fifty-seven children lost their only chance to life at a gestation of twenty weeks and beyond. In 1997, the state of Montana aborted a total 2809 children. If these statistics are not convicting to the violation of life in this state, then we need to examine our own hearts and conscience. If abortion has been legal for those of us twenty-seven years or older, approximately one third of us in this room would have never entered the world. Our generation was given the right to life.

Only arrogance would deny this same right to future generations. Give back life by passing House Bill 530.

**{Tape : 2; Side : A; Approx. Time Counter : 22.1 - 23.8}**

**Linda Holden** rose in support of the bill. This bill is in the interest and defense of innocent life. House Bill 530 is important for Montana, as it safeguards the lives of our citizens. Our children need the protection of the law. These are children who cannot speak for themselves and need our defense. Please vote to ban this procedure.

**{Tape : 2; Side : A; Approx. Time Counter : 23.8 - 24.4}**

**Arlette Randash, Eagle Forum**, had her testimony read into the record. **EXHIBIT(jus68a05)**

**{Tape : 2; Side : A; Approx. Time Counter : 24.4 - 26.9}**

**Opponents' Testimony:**

**Christine Kaufmann, Montana Affiliate of the National Abortion League**, rose in opposition of the bill. There is another side to this issue. This procedure is done on woman who really want to have their baby. It is done because there are severe fetal anomalies and the doctors feel that this is the best, most appropriate, and safest procedure in certain circumstances. If your daughter were in such a situation, who would you want making the decision about her medical care? The land surveyor, the state bureaucrat, the attorneys, or would a team of medical professionals deciding what the best procedure is in a particular case.

If this bill passes and is upheld in court, a doctor can perform this procedure if it is necessary to save the life of your daughter. What if the doctor thinks there is a thirty percent chance that your daughter will die? What if it is a sixty percent chance? When does he or she know when to proceed. What if he starts the procedure and realizes that there was only a ten percent chance? Will the doctor hesitate? Will he wonder if your daughter's life is worth going to jail for? Many proponents to this bill really want to ban all abortions and see this a step to getting there. The interesting part of this bill is that it really does not ban any abortions. All it does is say that a doctor has to select a different procedure, perhaps against his best medical judgement.

There is another side to this story. It is about real woman who are in very unfortunate circumstances. Woman making profoundly, incredibly, heart wrenching, difficult, private decisions. This bill allows politics into the private lives of Montana families



at a most difficult time. I would like to introduce a woman who was faced with such a decision. **EXHIBIT(jus68a06)**

**{Tape : 2; Side : A; Approx. Time Counter : 26.9 - 29.5}**

**Tammy Watts**, rose in opposition of the bill. I would like to thank the Committee for inviting me to speak today. I am hear not only to speak for myself, my husband Mitch and my family, but also for many other families. When I found out I was pregnant in October of 1994, we started making our plans. We talked about names, what kind of babie's room we wanted, and whether it would be a boy or a girl. We told everyone we knew, and I was only three weeks pregnant. My physician performed the standard ultrasound which all appeared normal. I took a test that was supposed to detect fetal anomalies, and that also looked normal. In March, I went in for a routine seven month ultrasound. The doctor was saying that everything looked good, and then he suddenly got really quiet. He then said that he saw something that he didn't expect to see. He said he wasn't sure what it was, and after about an hour of ultrasound, he and another doctor decided to send me to a perinatologist. That was also when they told us it was a girl. The next day the perinatologist did another ultrasound. He said he thought the ultrasound showed a condition in which the intestines grow outside the body, something that is easily corrected with surgery after birth. Just to make sure, the doctor made an appointment for me with another specialist in San Francisco.

After another intense ultrasound, the doctors met with us and the genetic counselors. They told me that my daughter was going to die. She had no eyes. Her kidneys were enlarged and already failing. The mass on the outside of her stomach contained her bowel and bladder. Her heart and other major organs were also failing. She could not live. These symptoms were all part of a syndrome called Trisomy thirteen. My mother-in-law collapsed to her knees. I remember looking out the window, not able to look at anybody. My mother-in-law asked if we were to go on with the pregnancy. The doctor said no. He said there was a place in Los Angeles that could help if we could not cope with carrying the pregnancy to term. The genetic counselor explained exactly how the procedure should be done if we chose to end the pregnancy.

I had a choice. I could have carried this pregnancy to term, knowing everything that was wrong. I could have gone on for two more months, doing everything that an expecting mother does. But knowing that my baby was going to die, and would probably suffer a great deal before dying. My husband and I would have had to endure that knowledge and watch that suffering. We could have never survived that. So we made the choice, together, my husband and I, to terminate the pregnancy. On Thursday morning we

started the procedure and it was over about 6:00 p.m. Friday night. The doctor, nurses and counselors were absolutely wonderful. While I was going through the most horrible experience of my life, they had more compassion than I have ever felt from anybody. We had wanted this baby so much. We named her McKenzie. Just because we had to end the pregnancy, didn't mean we didn't want to say goodbye.

Thanks to the type of procedure the doctor used, we got to hold her and be with her for a couple of hours, which was wonderful and heartbreaking all at once. Before we went home, I had a checkup with the doctor. He told me two things. One, I never want to see you again, and I mean that in a good way. Two, My job isn't done with you yet, until I get the news that you have had a healthy baby. He gave me hope that this tragedy was not the end. I never blamed God for this, I am a good Christian woman. However, I did question. Through a lot of prayer and talk with my pastor, I have come to realize that everything happens for a reason, and McKenzie's life had meaning. I knew it would come to pass some day and I would find out why it happen, and I think it is for this reason. I am supposed to talk to you and say you can't take this away from women and families. You can't. It is so important that we be able to make these decisions because we are the only ones who can. We made another painful decision shortly after the abortion. Our doctor called and said that he wanted to have McKenzie's anomalies studied to try and find out why this happened. We decided that we must do this. If we can keep one family from going through what we went through, it would make her life have some meaning. That testing was possible because of the type of procedure used.

I can tell you that I now know, more than ever, that there is no way to judge what someone else is going through. Until you have walked a mile in my shoes, don't pretend to know what this was like for me. And I don't pretend to know what someone else is going through. When I first went to our nations Capitol to testify about our experience, I thought that all members of congress would have to listen to our families story. After all we were the ones who had been there. We knew that the stories about scissors stabbed in the back of the skull were not true. We knew our baby did not suffer. We knew that our physician was compassionate. I knew that he did not do third trimester abortions on healthy women with healthy pregnancies, as right to life lobbyists claim. I just though that if I went to Washington D.C. and told the truth, everyone would see. Now I know better. In politics it is not about who tells the truth. It is about who wins the war of words and images. So the people who are showing the line drawn cartoons of healthy full-term babies being manhandled through the vaginal canal and stabbed to death, are winning that war because they have no shame.

Meanwhile, I have pictures too. Pictures of our daughter and the anomalies that guaranteed her life would end as soon as it began. But no one would show them on floor of the Senate and T.V. This bill is the most anti-family piece of legislation that has ever been proposed. It would devastate families like mine. As you consider this bill, please remember our daughter McKenzie and how much we will always love her. Situations like ours are private tragedies. They should not be subject to public debate. I am willing to come before you, and any other legislators, that considers this legislation. I will tell my stories so that other families like mine will not suffer greater tragedies of the future. When nature has taken away the joy of an expected child, don't let politicians take away the medical options that protect our health and our hope of having children in the future. Please defeat this bill.

***{Tape : 2; Side : A; Approx. Time Counter : 29.5 - 38.1}***

**Dr. Mark Miles** rose in opposition to the bill. The only state I have practiced medicine in is the state of Montana. I have taken care of Montana women, men and children for my professional career to date. I have testified at the House hearings on this same bill. It is interesting to see the certain issues that keep coming up. Personal references to myself, for example, have occurred. I have been referred to as the "abortionist." I am an obstetrician gynecologist. This bill is interesting as to how presumptuous it is as evidenced by the last proponent in some ways. It is presumptuous to the extent that a very private individual decision is being taken out of its proper context, namely physician/patient. I have heard rational for that that does not make sense on a day to day practical basis. This bill nothing but interfere with physician/patient relationships. There are numerous grey zones in the human endeavor which we call the practice of medicine. I know of no such situation in medicine where that a procedure or treatment can be listed and followed like a cookbook. Nothing is that straight forward in the human endeavor.

One of the proponents warned that someone will say that this bill is not about partial birth abortion. So be it, because I heard that I number of times today. The agenda here is not just about this bill. The overall agenda is in fact one to end abortion. There is a thought process and an agenda that goes beyond this. I would ask this Committee to please consider the impact of this sort of legislation beyond even what your own personal, religious beliefs may be. I think that the legislative body, in any state, has an ultimate responsibility, not toward their personal belief system, but to the welfare and benefit of their constituents.

***{Tape : 2; Side : A; Approx. Time Counter : 38.1 - 43.5}***

**Julie Daffin, Montana Right to Life**, rose in opposition of the bill. Montana Right to Life is devoted entirely to preserving and protecting innocent human life from conception to natural death. They are the largest such organization in Montana and are proud to be the state affiliate of the national Right to Life Committee, the oldest and largest organization of this kind in the United States. Montana is one of twenty-five states to enact a partial birth abortion ban in the last three years. All twenty-five states, including the Federal law passes twice by congress, have identical language: "Partial birth abortion means an abortion in which the person performing the abortion partially, vaginally delivers a living human fetus, before killing the fetus and completing the delivery." Of the twenty-five states, seven of the bans are in effect. Four of the seven states (South Dakota, Mississippi, South Carolina, Indiana) have identical language to ours in Montana. The other three (Tennessee, Virginia, Oklahoma) have the same language and have added a very narrow sub-definition. It states "vaginally delivers a living fetus, before killing the fetus, means deliberately and intentionally delivering into the vagina a living fetus, or a substantial portion thereof, for the purpose of performing a procedure that the physician, or person delivering the living fetus, knows will kill the fetus, and kills the fetus." The language was added with the support of the American Medical Association to the second Federal partial birth abortion bill passes by congress.

We have recommended this and other language to address the concerns of others and are willing to discuss alternative language. However, Montana Right to Life must oppose House Bill 530 in its present form because it would not prevent a single partial birth abortion from being performed in Montana. House Bill 530 requires that four steps be done in order to be found guilty of performing a partial birth abortion. It is so specific as to render it meaningless. All points must occur exactly as stated in the bill. If HB 530 is passed, the false impression that partial birth abortion are illegal in Montana will be given. Many people will believe that doing a partial birth abortion is illegal, when in fact it would not be. That false impression will cause more harm than not, and because of it, more babies will die. Montanans want a law that will outlaw partial birth abortions, not one that is strictly symbolic. Montanans want this procedure banned and we cannot settle for anything less. Please oppose this bill in its current form. **EXHIBIT(jus68a07)**  
**{Tape : 2; Side : B; Approx. Time Counter : 0 - 4.4}**

**Maureen Britell, National Abortion Federation**, rose in opposition of the bill. She read her written testimony into the record.  
**EXHIBIT(jus68a08)**

**{Tape : 2; Side : B; Approx. Time Counter : 4.4 - 9.7}**

**Devin Hartman, Intermountain Planned Parenthood,** rose in opposition of the bill. The decisions regarding medical procedures need to be made by a physician who knows the best course of treatment for the patient. Thousands of dollars of taxpayers money was spent by the state, defending this bill after it was passed by this body and found unconstitutional in the courts this past year. If this bill is passes again, and signed, we will be prepared again to file suit. It will again be overturned by the court. IPP hopes that you will make the responsible decision and oppose this very unnecessary legislation.

**{Tape : 2; Side : B; Approx. Time Counter : 9.7 - 10.9}**

**Anita Kuennen, Blue Mountain Clinic,** rose in opposition of the bill. This bill sets a dangerous precedent for lawmakers to be making decisions that should be left to trained physicians. Also the right to privacy for women going through this very difficult and compassionate procedure needs to be respected. Additionally, if lawmakers are interested in preventing abortion, then their needs to be a lot of focus on prevention, education, and also funding for contraception.

**{Tape : 2; Side : B; Approx. Time Counter : 10.9 - 11.6}**

**REP. GAIL GUTSCHE, HD 66, Missoula** rose in opposition of the bill. This bill is not needed. It is already illegal under current Montana law and Rowe v. Wade to perform this procedure and all other procedures on a viable fetus, except to preserve the life or health of the woman. The Supreme Court has repeatedly upheld that the woman's life and health take precedents over that of the fetus. The definition of health, outlined in this bill, is clearly too narrow to satisfy the consistent findings of the court. The definition in this bill was taken from a Supreme Court ruling that was overturned. This bill will not prevent a single woman from obtaining a single abortion. It will simply make it more difficult, dangerous, and criminalize doctors for acting on the best behalf of their patients. Please defeat this bill and save Montanans thousands of dollars in defending that of which has already been found indefensible.

**{Tape : 2; Side : B; Approx. Time Counter : 11 - 12.9}**

**Beth Brenneman, ACLU of Montana,** rose in opposition of the bill. This is not a limited ban. Proponents have gotten more savvy about how to present this measure. They understand that it is an extremely extremists position to be anti-abortion in this country so they try to present this measure as a limited ban. It is not a limited ban. We already have a provision in this state that

bars all post viability abortions when they are not necessary for the health and life of the mother. If that is already in place, we don't need a restriction of this particular procedure. In this bill we have a vague provision about what exactly they are intending to limit. It is possible for them to make it more restrictive and they have not. Any protestation to the contrary are ridiculous. All of us know that this is a first step to ban abortions in this state and across this country.

**EXHIBIT(jus68a09)**

**{Tape : 2; Side : B; Approx. Time Counter : 12.9 - 14.1}**

**Rebecca Moog, Montana Woman's Lobby** rose in opposition of the bill. She read her testimony into the record. **EXHIBIT(jus68a10)**

**{Tape : 2; Side : B; Approx. Time Counter : 14.1 - 15.4}**

**Lola Perrins, Montana Right to Life** rose in opposition of the bill. She read her testimony into the record. **EXHIBIT(jus68a11)**

**{Tape : 2; Side : B; Approx. Time Counter : 15.4 - 22.4}**

**Stacey Anderson, Montana Chapter of the National Abortion and Reproduction Rights Action League**, rose in opposition of the bill. Woman in cases like we have heard previously, that have had fetuses with anomalies, these are the women that we are protecting. Give women the choice to choose what is right for them.

**{Tape : 2; Side : B; Approx. Time Counter : 22.4 - 23.2}**

**Questions from Committee Members and Responses:**

**SEN. HOLDEN** asked **Dr. Miles** if he has ever performed partial birth abortions. **Dr. Miles** said that the phrase "partial birth abortion" is not found in a medical text. This is a politicalized, non-medical term. **Dr. Miles** said that he performs abortion services up to the point of viability. For the advanced terminations he uses a procedure that would be called a dilatation and evacuation procedure.

**SEN. HOLDEN** asked if when the brain is sucked out of the skull, does the skull itself then compress. **Dr. Miles** said that it does at times.

**SEN. HOLDEN** asked if it would be safe to say at times it does not compress. **Dr. Miles** said that to a certain extent, it always compresses. With respect to compression completely facilitating the remainder of the removal, no.

**SEN. HOLDEN** asked that if the head of the fetus is not completely compressed when the brains are sucked out, what is done to pull

the baby the rest of the way out. **Dr. Miles** said that sulfur clamps and bear clamps are used to complete the compression.

**SEN. HOLDEN** asked if the skull fragments at any time penetrate the skin. **Dr. Miles** said that the procedure is safer than a hysterectomy. He has never seen any sort of laceration of the cervix, impaired fertility in respect to blood transfusions. He does terminations and then eventually take care of them with future pregnancies.

**SEN. HOLDEN** said that some people testified that this bill would not be effective if an appendage were left in the vagina at the time the skull was collapsed. He asked if it is possible to do this procedure with an appendage left in the vagina. **Dr. Miles** said theoretically it would be possible if need be.

**SEN. HOLDEN** asked Dr. Jones if he has ever had any experience with skull fragments harming the mother. **Dr. Jones** said that when the procedure was done blindly, the skull still could be there. When the partial birth abortion was designed it was because of this. **Dr. Jones** said that he does not do abortions. He has seen that when dead babies are aborted, the long bones can scrape and lacerate the uterus. He said that it is important to look at the literature and not just sight personal experience. Literature shows that with the later the gestational age, the greater the risk.

*{Tape : 2; Side : B; Approx. Time Counter : 23.2 - 35.1}*

**SEN. GRIMES** asked if how frequent fetal anomalies occur, and of those cases, how many are treated with the DNX procedure. **Dr. Jones** said that in the cases of very lethal anomalies he feels compassion and sympathy. In those cases, however, they do not always have to be terminated by an abortion. Looking strictly at statistics, the risk to the mother of a twenty-seven or twenty-eight week abortion is going to be about seven times the risk of expectant management. Expectant management is when the woman is supported and counseled, and many of the infants with severe anomalies actually die in utero. Statistics often do not include down syndrome and spina-bifida which are two common conditions that partial birth abortions are done for. **Dr. Jones** went on to say that he believes that it is very rare to see partial birth abortions on lethal anomalies.

**SEN. GRIMES** asked the sponsor to respond to criticism that says the language in the bill is too restrictive. **REP. MCGEE** said that in putting this bill together they used the language given to them two years ago in order to describe what a partial birth

abortion is. Prior to this, people said that language was too broad and it needed to be more specific.

**SEN. GRIMES** asked about the circumstances that there might be a slight variance from the exact descriptions in the bill and wondered if there would be judicial discretion in those instances. **REP. MCGEE** said that this bill could most definitely be used mischievously. He pointed out that the language from HB 365 is still in the bill, therefore, the language that the courts said was too vague, is still in the bill, and then taken a step further.

**SEN. GRIMES** pointed out that the effective date was left off of the bill. **REP. MCGEE** said that that was not intentional and that would render it October first.

*{Tape : 2; Side : B; Approx. Time Counter : 35.1 - 43.1}*

**SEN. GRIMES** stated for the record that he thought it was inappropriate for one of the opponents to talk about "the warped scrutiny of our politically correct judges." He said that this was inappropriate and even if they disagree, it should not be referred to in a personal manner.

*{Tape : 2; Side : B; Approx. Time Counter : 43.1 - 43.5}*

**SEN. DOHERTY** asked Dr. Miles if expectant management could ever be medically and obstetrically necessary in certain cases. **Dr. Miles** said that expectant management basically means that a person waits for an event to happen. There are risks involved with expectant management as well. There are a lot less quantifiable problems. **Dr. Miles** asked who amongst us should judge a woman's choice to carry an abnormal fetus.

**SEN. DOHERTY** asked Dr. Jones if there might be a medical reason for termination and not for expectant management. **Dr. Jones** said that the literature supports that there would be a greater risk in performing a late term abortion than there would be expectant management. There are medical circumstances where a woman needs to be delivered because of a threat to her life or her health, but she does not necessarily need to be aborted.

**SEN. DOHERTY** asked Dr. Miles if the language in the bill is clear enough to understand what kind of procedure is being described in the bill. **Dr. Miles** said no.

**SEN. DOHERTY** asked if DNX is a medical term. **Dr. Miles** said that DNX is the actual ACOG reference.



**SEN. DOHERTY** asked if this bills intent is to stop abortions.

**REP. MCGEE** said that the intent of the bill is to stop this particular procedure. He said that this bill defines a specific procedure, with a very narrow corridor for people to maneuver along the lines of this procedure. What the bill does do, is stop this technique from being used in abortions. People can either do a different technique, or not go through with the abortion.

**SEN. DOHERTY** said that if there is a different procedure, the doctor is still able to use that procedure. **REP. MCGEE** said that under this bill that would be true.

**SEN. DOHERTY** asked what other procedures are available and if there is any other area of medicine where that legislature has injected itself. **Dr. Miles** said that he is not aware of any area of medicine that is legislated as much as proposed. He continued to say that the decisions made regarding this procedure is very inclusive of patient input. **Dr. Jones** stated that the procedure referred to as partial birth abortion is described as a specific procedure known as an in tact DNX. There are other procedures that can be done as late term abortions. A dilatation and extraction, saline abortions, and prosta glan procedures can also be used for late term abortions. He continued to say that if this bill passes it will do two things in establishing boundaries in the state of Montana. One, abortions can not be performed after viability accept for the legitimate cases when the life and health of the mother are in question. Two, it says that partial birth abortions cannot be not. There is not a medical necessity for that.

**SEN. DOHERTY** asked if there is any other area of medicine where the legislature has injected itself. **Dr. Jones** stated that issues of medicine run into issues that bring up the questions of whether the state of Montana pays for abortions. He said it deals with regulating insurance industries. There are precedents where the legislature has some oversight into medical practice.  
*{Tape : 3; Side : A; Approx. Time Counter : 0 - 15.1}*

**SEN. HALLIGAN** asked if the alternatives to the partial birth abortions are safe. **Maureen Britell** said that the scientific literature is one of the safest surgical procedures in the United States. The mental health of the patient need to be taken into consideration. This bill would be forcing women with doomed pregnancy to go full-term. One of the benefits of in tact DNX is that it allows for autopsy. **Dr. Jones** said that the vast majority of late term abortions and partial birth abortions are done on normal fetuses. This procedure has been called one-fifth abortion and four-fifths infanticide. There is a certain amount

of brutality that exists in this procedure that doesn't exist in other procedures. That is not to say that the other abortion procedures are good.

**SEN. HALLIGAN** asked if it was illegal to perform late term abortions on healthy fetuses. **Dr. Jones** said that is true in the state of Montana. One of the arguments is, what is the health of the mother.

**SEN. HALLIGAN** commented that his family has had to deal with the psychological difficulties of losing a child in the womb and having to carry to term. **Dr. Jones** said that it is important to look at the actual obstetric circumstance that one is faced with. The risk of having a partial birth abortion are always there. If the fetus had died in the womb, then it is a still birth. The way of managing a still birth is to deliver the baby, no to abort the baby.

*{Tape : 3; Side : A; Approx. Time Counter : 15.1 - 24.4}*

**SEN. JABS** asked the sponsor if language could be added to make an exception for fetuses with no chance of living. **REP. MCGEE** said that abortions are done on living beings. If a surgical procedure is done on a child that is dead in the womb already, that is not an abortion. He went on to say that as far as children with fatal anomalies, he does not have an answer.

**SEN. JABS** asked if there were room in this bill for an exception for children that have no chance of living. **REP. MCGEE** said he had no answer at this time to deal with that kind of issue. According to the abortionists that have published their information, twenty percent of the time we are dealing with children with problems. Eighty percent of the time we are dealing with normal human beings. This bill is aimed at stopping the killing of those eighty percent.

*{Tape : 3; Side : A; Approx. Time Counter : 24.4 - 27.4}*

**SEN. BARTLETT** asked why, if a goal of this bill is to avoid vagueness, does this bill not use the term in tact DNX that is known in medicine and described in medicine. **REP. MCGEE** said that it is not described. Within the medical field there is a lot of discrepancy on what to call this procedure. This is a new term and is not found in medical literature.

**SEN. BARTLETT** asked if this bill will pull in and ban more procedures. **REP. MCGEE** said that the language in this bill was put in to address the courts concerns. If it does the things that the bill talks about, then they should be outlawed.

**SEN. BARTLETT** asked if the intent of the bill is to outlaw this procedure regardless of the time frame. **REP. MCGEE** said that the way the bill reads now, this procedure would be outlawed in any stage of pregnancy.

**SEN. BARTLETT** asked the sponsor if he prefers that other procedures available are be used in late term abortion. **REP. MCGEE** said that as a state representative, he wishes to prohibit a procedure. Without a state representative hat on, he would prefer not to see any abortions.

**SEN. BARTLETT** commented that what the bill says to her, is that if she were in a situation and needed an abortion, and the safest procedure would be a partial birth abortion, it could not be performed. If this bill passes, the procedure options to choose from are reduced. **REP. MCGEE** said that he has no idea what it is like to be a woman and to be faced with these kinds of decisions. He said that what he is trying to say with this bill is that the baby deserves to live more than it deserves to die and certainly more than it deserves to be killed by this procedure.

*{Tape : 3; Side : A; Approx. Time Counter : 27.4 - 37.3}*

**SEN. DOHERTY** asked **Tammy Watts** if in her situation, was her procedure considered elective or not. **Mrs. Watts** said that it was their decision so it was elective. She said she was presented with all the other options and they decided to choose this method. There were no good choices. In the list of all of the bad choices, this was the best one.

*{Tape : 3; Side : A; Approx. Time Counter : 37.3 - 38.7}*

**Closing by Sponsor:**

**REP. MCGEE** closed on his bill, pointing out that the amendment that "health" is defined in the bill. The House Judiciary put on a reference to health exception, that he is striking. Eighty percent of the abortions recorded are done on healthy mothers and healthy babies. Many arguments are limited to babies that have a problem. The point was brought up that doctors should be making these decisions and not politicians. Doctors have testified on both sides of this. This is not the only option to save the life or preserve the health of a woman. This bill is brought to the Committee today specifically to address a court case. This is a very limited bill, but it is a policy decision on behalf of the state of Montana. If the medical community is then limited by the policy decisions, so be it. The legislature has the voice of the people and that is why we are here. The Committee, in making its decision, needs to keep in mind that this is a life and death situation.

*{Tape : 3; Side : A; Approx. Time Counter : 38.7 - Tape : 3; Side : B; Approx. Time Counter : 1.7}*

The Committee recessed until 12:45

**EXECUTIVE ACTION ON HB 269**

**Motion:** SEN. HALLIGAN moved that AMENDMENT HB0026901.AVL BE ADOPTED WITH THE CHANGE OF THE WORD AUTHORIZING TO REQUIRING IN NUMBER ONE. **EXHIBIT**(jus68a12)

**Vote:** Motion carried 9-0.

**Motion/Vote:** SEN. HALLIGAN moved that HB 269 BE CONCURRED IN AS AMENDED. Motion carried 9-0.

*{Tape : 3; Side : A; Approx. Time Counter : 1.7 - 5.5}*

**EXECUTIVE ACTION ON HB 530**

**Motion:** SEN. GRIMES moved that AMENDMENT HB 53002.AGP BE ADOPTED. **EXHIBIT**(jus68a13)

**Discussion:**

SEN. HOLDEN asked Valencia Lane to give the Committee an overview on what the amendments do. Ms. Lane said that this is amending existing law which is the statement of purpose. It would simply insert some legislative finding into that statement of purpose. The amendment strikes out the health exception, leaving the life exception of the mother in place.

SEN. GRIMES asked if the amendment is contradictory for defining health in the bill and then pulling health out of part of the bill. REP. MCGEE said that the health issue does not apply in the situation that it is being removed from.

**Vote:** Motion carried 5-4 with Bartlett, Doherty, Halligan, and Jabs voting no. (Roll call vote number one)  
*{Tape : 3; Side : B; Approx. Time Counter : 5.5 - 18.4}*

**Motion:** SEN. GRIMES moved that HB 530 BE CONCURRED IN AS AMENDED.

**Discussion:**

**SEN. GRIMES** said that he feels that the bill needs to be left in the form that legal council drafted it.

**SEN. DOHERTY** said that when he feels that the Committee is mixing standards of proof. This may be a problem when a provider is charged criminally for violating the statute. In response to the courts decision on vagueness and the right to privacy, it can be argued that this bill continues to chip away at the right of privacy. This is the latest attempt to find a way around the clear Constitutional rights that Montana citizens enjoy. He stated that he is uncomfortable for anyone other than a trained physician prescribing what is and is not in the best interest of a Montana citizen.

**SEN. HOLDEN** stated that the Constitutional right of life to all people is something that can not be forgotten about. As a matter of public policy, as elected officials, the Committee needs to recognize that the children in the next generations of Montana need to be protected.

**SEN. HOLDEN** said that the Committee needs to keep in mind the life stories that have been presented today. This bill will not stop one partial birth abortion.

**Substitute Motion/Vote:** **SEN. HALLIGAN** made a substitute motion that **HB 530 BE TABLED. Substitute motion failed 3-6 with Bartlett, Doherty, and Halligan voting aye.** (Roll call vote number two)

***{Tape : 3; Side : B; Approx. Time Counter : 24.4 - 27.2}***

**SEN. BARTLETT** stated that she did not believe the eighty percent figure that was presented to the Committee. She said it was arrogant to override the people involved in these situations and their medical advisors. This is a radical departure from anything this legislature has done heretofore. She said that it is hard to comprehend the extent to which the real experiences of real people, are dismissed as if it doesn't count.

**SEN. JABS** said that he would like to see more exemptions in the bill.

**SEN. GROSFIELD** said that he agreed with **SEN. BARTLETT'S** assumption that the eighty percent figure is hard to believe. He said that even if the numbers were reversed, and the true figure was twenty percent, it is still reason enough to vote for this bill.

**.SEN. GRIMES** said that abortion is often used as a form of birth control. This form of abortion is a grisly, inhuman procedure

that is nothing more than infanticide. This is used on live babies that are inches away from breathing.

***{Tape : 3; Side : B; Approx. Time Counter : 27.2 - 34.6}***

**Vote:** Motion **carried 6-3 with Bartlett, Doherty, and Halligan voting no.** (Roll call vote number 3)

**ADJOURNMENT**

Adjournment: 2:15 P.M.

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SEN. LORENTS GROSFIELD, Chairman

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Delila Croucher, Secretary

LG/DC

**EXHIBIT** (jus68aad)